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**ALLTEL**

DOCKET FILE COPY ORIGINAL

February 24, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

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**FEB 24 1997**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: Implementation of Section 402(b)(2)(A) of the  
Telecommunications Act of 1996  
CC Docket No. 97-11

Dear Mr. Caton:

Enclosed for filing on behalf of ALLTEL Telephone Services Corporation, ("ALLTEL") please find an original and six (6) copies of the Comments in connection with the above-referenced matter.

In response to the Commission's Notice of Proposed Rulemaking, I am submitting ALLTEL's Comments on a 3.5 inch diskette formatted in an IBM compatible form using MS-DOS 5.0 and WordPerfect 5.1 software, in "read-only mode" to the Secretary, Network Services Division.

Please address any questions respecting this matter to the undersigned counsel.

Very truly yours,



Carolyn C. Hill

CCH/ss  
Enclosures

cc: Secretary, Network Services Division  
(w/copy of pleading and diskette)

International Transcription Services  
(w/copy of pleading)

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
Implementation of Section 402(b)(2)(A) of )  
the Telecommunications Act of 1996 )

CC Docket 97-11

To the Commission:

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COMMENTS

ALLTEL Telephone Services Corporation

Carolyn C. Hill  
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Its Attorney

## **SUMMARY**

Section 401(b)(2)(A) of the 96 Telecom Act requires that the Section 214 extension exemption be applied to all carriers on the same basis. The mode of regulation is not a consideration.

There is no justifiable basis for the Commission to propose forbearance of the Section 214 requirements for all segments of the industry but rate of return LECs. Rate of return LECs do not have the ability to goldplate their investment. They are limited to a prescribed rate of return, their interstate rates are all fully cost supported, and their investments are subject to challenge.

The ALLTEL Companies are all rate of return LECs and are faced with competition. Herein the Commission would hamstring us in our ability to meet this competition by permitting the largest carriers on the globe to enter a market at will while requiring the ALLTEL Companies to file time-consuming and expensive applications. This type of approach constitutes the promotion not of competitive market conditions, but the promotion of specific competitors at the expense of one small, but vital segment of the industry--the rate of return LECs. The Commission should apply forbearance from Section 214 requirements to all rate of return LECs.

**In the Matter of** )  
**Implementation of Section 402(b)(2)(A) of** )  
**the Telecommunications Act of 1996** ) **CC Docket 97-11**

ALLTEL Telephone Services Corporation (“ALLTEL or the ALLTEL Companies”), in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) released January 13, 1997, hereby submits its Comments in the above-captioned proceeding.

The ALLTEL Companies are rate of return local exchange carriers (“LECs”) serving 1.6 million access lines in fourteen (14) states. In reviewing the Commission’s NPRM, it is apparent that rate of return companies have been singled out for different regulatory treatment and evaluation with respect to the application of Section 214 requirements. ALLTEL submits that this was not what the Congress had in mind in enacting the Telecommunications Act of 1996 (“96 Act”). Section 402(b) of the 96 Act is entitled “Regulatory Relief”; as part of that regulatory relief, the Congress specifically mandated in Section 402(b)(2)(A) that “the Commission shall permit any common carrier to be exempt from the requirements of Section 214 for the extension of any line”. That section does not address nor does it permit the Commission, as it has

done herein, to consider the mode of regulation of any common carrier before the exemption is created or before it is applied. Thus, the statute requires, on its face, that the exemption from Section 214 requirements relating to the extensions of interstate lines applies to all carriers on the same basis.

II. The Commission Should Forbear From Applying Section 214 Requirements to Rate of Return LECs

ALLTEL is also dismayed by the Commission's attempt--once again-- to single out rate of return carriers for more burdensome and onerous regulatory treatment than the rest of the domestic telecommunications industry. In this regard, the Commission has proposed to forbear from applying all Section 214 authorization requirements to LECs subject to price cap regulation, to LECs that are average schedule companies, and to all domestic carriers classified as non-dominant whether they are offering local or long distance service. (NPRM, pg. 17) In determining that forbearance should be applied to all carriers, but rate of return ones, the Commission said it applied the three-prong test for forbearance set forth in Section 10 of the 96 Act, (now 47 USC §160). This test requires the Commission to determine that:

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

The Commission concluded, with respect to the first prong of the test, that the rate regulation scheme applied to average schedule companies and price cap LECs constrained their ability to raise interstate telephone service rates. (NPRM pg. 18). ALLTEL does not believe that this is the correct test because the alleged ability to raise interstate telephone service rates is not synonymous with the requirement of Section 10 that charges, practices, etc. are just and reasonable and are not unjustly or unreasonably discriminatory. Insofar as the second prong of the test--that enforcement is not necessary for the protection of consumers - the Commission apparently believes that this is satisfied by the mode of regulation or the lack thereof for all segments of the telecommunications industry but rate of return LECs. (NPRM p. 22) ALLTEL adamantly disagrees. Of all the incumbent LECs, rate of return carriers are the only ones required to file full cost support for their interstate services. They do not, contrary to the Commission's perception, have the ability to goldplate their investment. Their rate of return is prescribed, their investment decisions are subject to challenge and are required to be prudent, and they are given the opportunity, but not the right, to earn a reasonable return on their investment.

That there should be negative connotations because a carrier is under rate of return regulation or adverse consequences to it in terms of regulatory relief is puzzling, to say the least. As pointed out by ALLTEL in its recent comments in the Access Reform proceeding, CC Docket 96-262, the federal price cap form of regulation has not been a viable option for the ALLTEL Companies. It was not designed for

companies of their size. Moreover, the ALLTEL Companies do not have the levels of sustainable efficiencies inherent in the current productivity offset to adopt price cap regulation. Further, the FCC's Rules require that price cap regulation must be elected for all study areas, i.e., on an "all or nothing" basis. ALLTEL serves diverse geographic areas. Many of our existing exchanges are not contiguous and are dispersed throughout a state. Customer or line density, a primary cost driver, is widely variant in the ALLTEL system with some exchanges serving as few as twenty (20) lines per square mile and others serving close to seven thousand (7,000) lines per square mile. This variation has also undermined ALLTEL's election of price caps. Furthermore, the ALLTEL Companies, unlike average schedule companies, are all cost companies.

The form of regulation applied to a company or geographic service boundaries are meaningless distinctions when competitors develop their entry strategies. We are faced with competition, and herein the Commission would hamstring us in the ability to meet it. This is incredible given the fact that the Commission does not propose to apply Section 214 requirements to the largest--whether measured in terms of size, revenues, or market share--carriers on the globe. In a competitive marketplace, how can it make sense for a rate of return ALLTEL company to be required to seek time-consuming and expensive 214 authority to provide a new domestic interstate service while, at the same time, AT&T, MCI/BT and now, perhaps, even Nippon, are able to provide the same service in the same market at will!

The type of handicapping proposed by the Commission with respect to rate of return LECs also fails to pass the third prong of the Section 10 test--it is not in the public interest. Rather, it constitutes the promotion not of competitive market


conditions, but, rather, it promotes specific competitors at the unjustifiable expense of one small, but vital segment of the industry--the rate of return LECs. In the evolving telecommunications market, the product has become an integrated package of services, including local calling, exchange access, long distance, internet access, and wireless communications. In that environment, the ALLTEL Companies have no market power. ALLTEL has no service that can be leveraged by altering access prices. We are in no position to actively use price to meet financial or market share goal. We do not have the market power nor the pricing control to disadvantage our customers or competition by goldplating our investment or unilaterally charging unjust or unreasonable rates.

Despite its tentative conclusion that rate of return LECs should be subject to streamlined Section 214 requirements for their new or additional lines, the Commission requested comments on whether it should forbear from regulating these smaller carriers altogether. ALLTEL's answer is a resounding "Yes." As indicated by the Commission, rate of return companies account for less than approximately two-percent (2%) of interstate revenues, and few Section 214 applications from such firms have ever been challenged or rejected. It makes no sense, given these factors, and based on ALLTEL's previous arguments herein, for the Commission to continue to apply Section 214 requirements to this segment of the industry.



Accordingly, in light of the foregoing, ALLTEL respectfully requests that the Commission should forbear altogether from applying the Section 214 requirements to rate of return LECs.

Respectfully submitted,  
ALLTEL Telephone Services Corporation

By:   
Carolyn C. Hill  
Its Attorney

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Dated: February 24, 1997

CERTIFICATE OF SERVICE

I, Sondra Spottswood, certify that a copy of the foregoing Comments of ALLTEL Telephone Services was served this 24th day of February, 1997, on the following, by hand delivery:

Secretary, Network Services Division  
Common Carrier Bureau  
Federal Communications Commission  
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Sondra Spottswood